

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 5/27/08

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JAMAL KEARSE,

Plaintiff,

-against-

DEPARTMENT OF CORRECTIONS, et al.,

Defendants.  
----- x

08 Civ. 1503 (GBD) (AJP)

ORDER DENYING APPOINTMENT  
OF COUNSEL

**ANDREW J. PECK, United States Magistrate Judge:**

Plaintiff, Jamal Kears, appearing pro se and in forma pauperis, has applied for the appointment of counsel. (See attached.) In light of the decisions of the Second Circuit in Cooper v. Sargenti Co., 877 F.2d 170 (2d Cir. 1989), and Hodge v. Police Officers, 802 F.2d 58 (2d Cir. 1986), the Court denies plaintiff's application at this time.

The threshold question in determining whether or not to assign counsel to an indigent party is whether his/her claim is "likely to be of substance." Cooper, 877 F.2d at 172; Hodge, 802 F.2d at 61. Hodge articulates those factors to be considered with respect to whether or not counsel should be appointed once a claim is found likely to be of substance: "the indigent's ability to investigate the crucial facts, whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the factfinder, the indigent's ability to present the case, the complexity of the legal issues and any special reason in that case why appointment of counsel would be more likely to lead to a just determination."

Hodge, 802 F.2d at 61-62; accord, Cooper, 877 F.2d at 172. The "plaintiff's ability to obtain representation independently" is another factor to be considered. Cooper, 877 F.2d at 172.

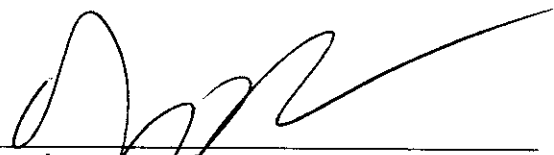
As the Second Circuit has reminded the district courts, volunteer lawyer time is a scarcity that should be carefully meted out. In Cooper, the Second Circuit emphasized this scarcity, and admonished district courts to take seriously the threshold requirement that the claim be "likely to be of substance." Cooper, 877 F.2d at 172. The Second Circuit went on to instruct that district "courts should not grant such applications indiscriminately." Id.; see also Hodge, 802 F.2d at 60.

Appointment of counsel may not be warranted if the plaintiff's chances of success with his complaint are slight. Cooper, 877 F.2d at 172; Hodge, 802 F.2d at 60. It is difficult to determine plaintiff's chances of success at this time.

A more fully developed record is necessary before the Court can determine if plaintiff's chances of success warrant the appointment of counsel. Therefore, plaintiff's application is denied without prejudice to its renewal, during or after discovery, when the record is more fully developed.

SO ORDERED.

DATED: New York, New York  
May 27, 2008

  
\_\_\_\_\_  
**Andrew J. Peck**  
United States Magistrate Judge

Copies to: Jamal Kears (Mail)  
Bradford C. Patrick, Esq. (Fax)  
Judge George B. Daniels

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JAMAL HEARSE

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

08 Civ. 1503 (GBD ASP)

-against-

APPLICATION FOR THE COURT  
TO REQUEST COUNSEL

DEPARTMENT OF CORRECTIONS, WARDEN SHAW,  
CAPTAIN CLESTON #1425, OFFICER ALMANZAR #18373,  
OFFICER SMITH IIA, DR. ROUCHE

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

1. Name of applicant. JAMAL HEARSE #241-06-17385
2. Explain why you feel you need a lawyer in this case. (Use additional paper if necessary)

AT THIS MOMENT THE CASE IS GETTING COMPLICATE AND I NOW  
NEED THE PROPER LEGAL ASSISTANCE OF COUNSEL.

3. Explain what steps you have taken to find an attorney and with what results. (Use additional paper if necessary)  
I HAVE WRITTEN LETTER TO PERSONAL INJURY ATTORNEYS AND NONE IS WILLING  
TO ACCEPT THE ABOVE CASE. I HAVE ALSO REQUESTED ASSISTANCE FROM THE  
COURTS AND WAS TOLD THAT IT WAS TOO EARLY TO REQUEST LEGAL ASSISTANCE.
4. If you need a lawyer who speaks in a language other than English, state what language you speak:  
ENGLISH
5. I understand that if a lawyer volunteers to represent me and my lawyer learns that I can afford to pay for a lawyer, the lawyer may give this information to the Court.
6. I understand that if my answers on my Request to Proceed *In Forma Pauperis* are false, my case may be dismissed.
7. I declare under penalty of perjury that the foregoing is true and correct.

Dated: 03-26-08

Jamal Hearse  
Signature

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORKJamal Hearse  
(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

08 Civ. 1503 (GB) (AJP)

-against-

Department of Corrections, Warden Shaw,  
Captain Chestnut #1425, Officer Almazan #18373  
Officer Smith Jr., Dr. RouchieREQUEST TO PROCEED  
IN FORMA PAUPERIS  
FOR APPLICATION FOR THE  
COURT TO REQUEST COUNSEL

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, Jamal Hearse, (print or type your name) am the plaintiff/petitioner in the above entitled case and I hereby request to proceed *in forma pauperis* and without being required to prepay fees or costs or give security. I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor, and that I believe I am entitled to redress.

1. If you are presently employed:
- give the name and address of your employer
  - state the amount of your earnings per month

N/A

2. If you are NOT PRESENTLY EMPLOYED:
- state the date of start and termination of your last employment
  - state your earnings per month
- YOU MUST ANSWER THIS QUESTION EVEN IF YOU ARE INCARCERATED.**

May 6, 2005 → Dec. 17, 2007 / \$2,000.00 Per month

3. Have you received, within the past twelve months, any money from any source? If so, name the source and the amount of money you received.

N/A

- a) Are you receiving any public benefits? ☒ No. ☐ Yes, \$ N/A.
- b) Do you receive any income from any other source? ☒ No. ☐ Yes, \$ N/A.

4. Do you have any money, including any money in a checking or savings account? If so, how much?

☒ No. ☐ Yes, \$ N/A.

5. Do you own any apartment, house, or building, stock, bonds, notes, automobiles or other property? If the answer is yes, describe the property and state its approximate value.

☒ No. ☐ Yes, N/A.

6. Do you pay for rent or for a mortgage? If so, how much each month?

☒ No. ☐ Yes, \$ N/A.

7. List the person(s) that you pay money to support and the amount you pay each month.

INCARCERATED AT PRESENT MONITOR  
N/A

8. State any special financial circumstances which the Court should consider.

N/A

I understand that the Court shall dismiss this case if I give a false answer to any questions in this declaration.

**I declare under penalty of perjury that the foregoing is true and correct.**

Signed this 26 day of MARCH, 2008.  
date month year

Donald Kearse  
Signature